

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

CHARLES E. HILL & ASSOCIATES, INC., )

Plaintiff, )

v. )

AMAZON.COM, INC., *et al.*, )

Defendants. )

Civil Action No. 2-02-CV-186-TJW

**DEFENDANT IBM'S RESPONSE TO  
CARL ROTH'S MOTION TO WITHDRAW**

IBM does not oppose Carl Roth's motion to withdraw as counsel for IBM in this action, but IBM does not agree that Mr. Roth may represent other clients in other litigation adverse to IBM because of his withdrawal as counsel for IBM in this action. For example, the conflicts posed by Mr. Roth's acceptance of the concurrent representation of Compression Labs, Inc. ("CLI") in *Compression Labs, Inc. v. Adobe Systems, Inc. et al.* (Civil Action No. 2:04-CV-158), while he represented IBM in this action are not necessarily cured by Mr. Roth's withdrawal from representation of IBM in this action. Accordingly, IBM reserves its rights to seek to disqualify Mr. Roth from representation of parties that are adverse to IBM, including without limitation representation of CLI in *Compression Labs, Inc. v. Adobe Systems, Inc. et al.* (Civil Action No. 2:04-CV-158) and *Compression Labs, Inc. v. Dell, Inc., IBM Corporation and Toshiba America, Inc.* (Civil Action No. 2:04-CV-159-TJW),<sup>1</sup> if it is deemed appropriate upon further consideration.

Further, Mr. Roth's motion to withdraw improperly attaches two confidential communications between Mr. Roth and his co-counsel representing IBM. Accordingly, IBM



respectfully requests that all copies of these communications be returned to IBM or, at the very least, filed under seal and removed from the publicly accessible PACER system.

/s/ Mark N. Reiter

Mark N. Reiter  
Texas State Bar No. 16759900  
mnreiter@jonesday.com  
JONES DAY  
2727 North Harwood Street  
Dallas, Texas 75201  
Telephone: 214-220-3939  
Facsimile: 214-969-5100

David L. Witcoff  
Illinois State Bar No. 6183629  
dlwitcoff@jonesday.com  
JONES DAY  
77 West Wacker  
Chicago, Illinois 60601-1692  
Telephone: 312-782-3939  
Facsimile: 312-782-8585

ATTORNEYS FOR INTERNATIONAL  
BUSINESS MACHINES CORP.

---

<sup>1</sup> These two actions are substantively identical, involving the same patent and the same accused JPEG standard.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) this 9th day of July, 2004. Additionally, all counsel of record will be served by first-class United States mail, postage prepaid.

**Amazon.com**

Carl R. Roth  
Michael C. Smith  
Law Office of Carl R Roth  
115 North Wellington  
Suite 200  
Marshall, Texas 75670

**America Online, Inc.**

Thomas E. O'Connor, Jr.  
Mark A. Losey  
CALFE HALTER & GRISWOLD L.L.P.  
1650 Fifth Third Center  
21 East State Street  
Columbus, Ohio 43215-4243

Ruffin B. Cordell  
Michael J. McKeon  
Brian T. Racilla  
FISH & RICHARDSON P.C.  
1425 K Street, NW  
Washington, DC 20025

Otis W. Carroll, Jr.  
Jack Wesley Hill  
IRELAND CARROLL & KELLEY, P.C.  
6101 South Broadway  
Suite 500  
Tyler, Texas 75703

**J. Crew Group, Inc.**

Arlene Hong  
J. CREW GROUP, INC.  
770 Broadway  
New York, New York 10003

**Land's End, Inc.**

Erik J. Phelps  
Associate General Counsel  
LANDS' END, INC.  
5 Lands' End Lane  
Dodgeville, Wisconsin 53595

**Limited Brands, Inc.**

Angelo Notaro  
NOTARO & MICHALOS, P.C.  
100 Dutch Hill Road  
Suite 110  
Orangeburg, New York 10962

**Quixter, Inc.**

Laura Beth Miller  
James R. Sobieraj  
BRINKS HOFER GILSON & LIONE  
NBC Tower, Suite 3600  
455 North Cityfront Plaza  
Chicago, Illinois 60611-5599

**eBay, Inc.**

Chris R. Ottenweller  
ORRICK HERRINGTON & SUTCLIFFE,  
L.L.P.  
1000 Marsh Road  
Menlo Park, California 94025

**The Gap, Inc.**

David A. Nelson  
LATHAM & WATKINS  
Sears Tower, Suite 5800  
233 South Wacker Drive  
Chicago, Illinois 60606

**Spiegel, Inc. and EddieBauer, Inc.**

Angelo Bufalino  
VEDDER PRICE KAUFMAN &  
KAMMHOLZ  
222 North LaSalle Street  
Suite 2600  
Chicago, Illinois 60601

**Williams-Sonoma, Inc.**

Claude M. Stern  
J. David Hadden  
FENWICK & WEST, L.L.P.  
Two Palo Alto Square  
Palo Alto, California 94306

**Charles E. Hill & Associates, Inc.**

George E. Purdy  
R. Trevor Carter  
S. Andrew Burns  
Bose McKinney & Evans LLP  
2700 First Indiana Plaza  
135 North Pennsylvania Street  
Indianapolis, Indiana 46204

**Recreation Equipment, Inc.**

Pamela Rossano Myers  
V.P., General Counsel, and Secretary  
RECREATION EQUIPMENT, INC.  
6750 South 228<sup>th</sup> Street  
Kent, Washington 98023

**Sears, Roebuck and Co.**

Frank Calabrese, Senior Counsel  
SEARS, ROEBUCK AND CO.  
3333 Beverly Road  
B6-379A  
Hoffman Estates, Illinois 60179

**Local counsel for Amazon.com, Buy.com,  
Inc., eBay, Inc., Eddie Bauer, Inc., J. Crew  
Group, Inc., L.L. Bean, Inc., Lands' End,  
Ind., Limited Brands, Inc., Sears, Roebuck  
and Co., and Recreational Equipment, Inc.**

Charles H. Clark  
Charles Ainsworth  
CLARK, LEA & AINSWORTH  
604 West Woldert  
Tyler, Texas 75702

John Allcock  
Edward H. Sikorski  
Kathryn B. Riley  
GRAY CARY WARE & FRIEDENRICH  
L.L.P.  
401 B Street  
Suite 2000  
San Diego, California 92101-4240

Peter J. Brann  
BRANN & ISAACSON  
184 Main Street  
Lewiston, Maine 04243

/s/ Mark N. Reiter

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

East Texas Technology Partners, L.P.,

Plaintiff,

V.

Toshiba America, Inc., Compaq Computer Corp., Dell Computer Corp., Gateway, Inc., Hewlett Packard Co., International Business Machines, Corp., Acer America Corp., Emachines, Inc.,

Defendants.

Civil Action No. 2-03CV-465-TJW

Hon. T. John Ward

DEFENDANT DELL INC.'S RESPONSE TO  
CARL ROTH'S MOTION TO WITHDRAW

Dell Inc. (“Dell”) does not oppose Carl Roth’s motion to withdraw. Dell’s non-opposition, however, is without prejudice to its right to seek disqualification of Mr. Roth in matters that are adverse to Dell, including, but not limited to, Mr. Roth’s representation of Compression Labs Inc., e.g., *Compression Labs, Inc. v. Dell Inc., et al.*, Civil Action No. 2:04-CV-159-TJW, and *Compression Labs, Inc. v. Adobe Corporation, et al.*, Civil Action No. 2:04-CV-158-DF.<sup>1</sup>

Further, Mr. Roth's motion to withdraw improperly attaches a confidential, privileged communication between Mr. Roth and his co-counsel representing Dell. Accordingly, Dell respectfully requests that all copies of this communication be returned to Dell or, at the very least, filed under seal and removed from the publicly accessible PACER system.

Respectfully submitted,

/s/ Mark N. Reiter

Thomas R. Jackson, Esq.

Attorney-in-Charge

State Bar No. 10496700

[trjackson@jonesday.com](mailto:trjackson@jonesday.com)

Mark N. Reiter, Esq.

State Bar No. 16759900

[mnreiter@jonesday.com](mailto:mnreiter@jonesday.com)

Daniel T. Conrad, Esq.

State Bar No. 24026608

[dtconrad@jonesday.com](mailto:dtconrad@jonesday.com)

JONES DAY

2727 North Harwood Street

Dallas, Texas 75201-1515

Telephone: 214-220-3939

Facsimile: 214-969-5100

ATTORNEYS FOR DEFENDANT  
DELL INC.

---

(continued...)

<sup>1</sup> These two actions are substantively identical, involving the same patent, the same accused JPEG standard and accused products.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) this 9th day of July, 2004. Additionally, all counsel of record will be served pursuant to the Federal Rules of Civil Procedure in the manner set forth below:

Douglas A. Cawley  
McKool Smith, P.C.  
300 Crescent Court, Suite 1500  
Dallas, TX 75201  
**Attorneys for East Texas Technology Partners, L.P.**

**VIA FEDERAL EXPRESS**

Robert M. Chiaviello, Jr.  
Fulbright & Jawroski L.L.P.  
2200 Ross Avenue, Suite 2800  
Dallas, TX 75201  
**Attorneys for Hewlett Packard and Compaq**

**VIA FEDERAL EXPRESS**

Arthur I. Neustadt  
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.  
1940 Duke Street  
Alexandria, VA 22314  
**Attorneys for Toshiba America, Inc.  
and Toshiba America Information Systems, Inc.**

**VIA FEDERAL EXPRESS**

Kai Tseng  
Orrick, Herrington & Sutcliffe LLP  
1000 Marsh Road  
Menlo Park, CA 94025  
**Attorneys for ACER America**

**VIA FEDERAL EXPRESS**

Bryan Farney  
Dewey Ballantine LLP  
816 Congress Avenue  
Suite 1900  
Austin, TX 78701-2478  
**Attorneys for Gateway**

**VIA FEDERAL EXPRESS**

John J. Feldhaus  
Foley & Lardner  
3000 K Street, N.W.  
Washington, DC 20007-5109  
**Attorneys for Agere Systems**

**VIA FEDERAL EXPRESS**

Steven D. Atlee  
Latham & Watkins, LLP  
633 West Fifth Street, Suite 4000  
Los Angeles, CA 90071-2007  
**Attorneys for Conexant Systems**

**VIA FEDERAL EXPRESS**

/s/ Mark N. Reiter

DLI-5856228v2